

**IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA**

Case No.: A289/2024

(1) REPORTABLE: YES/**NO**

(2) OF INTEREST TO OTHER JUDGES: YES/**NO**

(3) REVISED: YES

SIGNATURE:

DATE: 18 Sep 2025

In the matter between

R[...] M[...] C[...]

APPELLANT

And

THE STATE

RESPONDENT

APPEAL JUDGMENT

JOHNSON AJ (MOSOPA J CONCURRING)

[1] On 7 June 2024, the appellant pleaded guilty to the following charges in the Regional Court Benoni:

COUNT 1: Murder read with the provisions of section 51(1) of the Criminal Law Amendment Act 105 of 1997.

COUNT 2: Contravention of section 49 (1) of the Immigration Act 13 of 2002.

[2] The appellant was convicted on both counts on 7 June 2024.

[3] The appellant was sentenced on 19 June 2024 as follows:

COUNT 1: Life Imprisonment;

COUNT 2: 6 months imprisonment.

[4] The appellant was legally represented.

[5] The appellant has an automatic right of appeal which he noted in respect of the sentence in count 1.

[6] This appeal therefore lies against the sentence imposed in respect of count 1.

Background

[7] On the relevant date, the sister of the appellant, Ms M[...], and her 2-year-old son, the deceased, went to the appellant and Ms M[...]'s mother to visit as the mother was ill. The appellant lived in his own room on the same property with their mother. After visiting their mother, Ms M[...] spent a short time with the appellant and the deceased in the appellant's room. Ms M[...] then left the deceased with the appellant and went back to her place. When she arrived at her place, she realised that she had left her dishwashing cloth at her mother's place and returned to retrieve it. When she returned to her mother's place, she found the deceased on the ground at the entrance to the door with his trouser pulled down to his knees. He had soiled himself and was bleeding. The appellant was not present, and her mother was inside her shack and was unaware of what had happened to the deceased. Ms M[...] picked the deceased up and ran into the street screaming and desperately seeking help. Ms M[...] saw the appellant at that stage, but he walked away from her and did not assist. A person with a vehicle, assisted her and transported her and the deceased to the Daveyton Main Clinic. The deceased was certified dead when they arrived at the clinic. When Ms M[...] later returned to her mother's place, the appellant was sleeping in his room and was later arrested. The appellant informed the police that the deceased had consumed some pills in his room which killed him. The appellant's shack was searched and a white powder which was suspected of being crystal meth was found. It was common cause that the appellant used crystal meth twice a day. In his s112(2) statement, the appellant admitted that his actions were wrongful,

punishable by law and that he has no excuse why he committed the offences. According to the appellant's s112(2) statement the deceased took his grandmother's pills and drank them, and the appellant managed to remove one pill from his mouth. After taking the pills the deceased acted strangely, and the appellant felt disrespected by him. The deceased then followed him to his shack. The appellant saw an axe behind the door of his shack which he then used to hit the deceased on his neck. The cause of death of the deceased is recorded in Exhibit "B" as: "Blunt force head and neck injuries".

[8] The test in an appeal against a sentence is whether the trial court imposing the sentence exercised its discretion properly or not.

[9] In *S v Pillay*¹ it was stated:

"[T]he essential inquiry in an appeal against sentence, however, is not whether the sentence is right or wrong, but whether the Court in imposing it exercised its discretion properly and judicially...".²

[10] It was submitted by Ms Van Wyk, on behalf of the appellant, that the time spent in prison awaiting trial was not considered, the trial court erred in not finding substantial and compelling circumstances to warrant a departure from the sentence of life imprisonment imposed, the sentence of life imprisonment was disproportionate in the circumstances of this case and the trial court erred by not individualising the sentence.

[11] The personal circumstances of the accused were recorded as follows:

1. He was 27 years old at the time of the commission of the offence.
2. He is single.
3. He has no children.
4. He is a first offender, as no previous convictions were proved by the State.
5. His highest level of education is grade 10 as he failed to pass grade 11.

¹1977 (4) SA 531 (A).
SCA) para 14.

6. He was unemployed at the time of his arrest.
7. The appellant pleaded guilty and by doing so he showed remorse.
8. The appellant used crystal meth, which he has stopped using since his arrest.

[12] A victim impact report, Exhibit “E” as well as a pre - sentence report, Exhibit “F”, were admitted into evidence.

[13] In respect of the personal circumstance submitted that the appellant used crystal meth, there was no evidence adduced regarding whether he was under the influence of crystal meth at the time of commission of the offence. The appellant pleaded guilty to the offences charged in terms of section 112(2) of the Criminal Procedure Act³, Exhibit “A”. In Exhibit “A”, the appellant failed to mention that he was under the influence of crystal meth. The fact that he used crystal meth is contained in paragraph 8.5 of Exhibit “F” but not that he was under the influence of any drug at the relevant time.

[14] It was submitted that the time spent in prison was not taken into account by the court *a quo*. The appellant was arrested on 30 May 2023 and remained in custody until he was sentenced on 19 June 2024. The time spent in prison was 1 year and 3 weeks.

[15] In *Radebe and Another v S*⁴, the Supreme Court of Appeal held:

“A better approach, in my view, is that the period in detention pre-sentencing is but one of the factors that should be taken into account in determining whether the effective period of imprisonment to be imposed is justified: whether it is proportionate to the crime committed. Such an approach would take into account the conditions affecting the accused in detention and the reason for a prolonged period of detention. And accordingly, in determining, in respect of the charge of robbery with aggravating circumstances, whether substantial and compelling circumstances warrant a lesser sentence than that prescribed by the Criminal Law Amendment Act 105 of 1997 (15

³ 51 of 1977.

⁴ 2013 (2) SACR 165 (SCA) para 14.

years' imprisonment for robbery), the test is not whether on its own that period of detention constitutes a substantial or compelling circumstance, but whether the effective sentence proposed is proportionate to the crime or crimes committed: whether the sentence in all the circumstances, including the period spent in detention prior to conviction and sentencing, is a just one."

[16] Further in *S v Dlamini*⁵, the court held:

"This is but one of the factors that should be taken into account determining whether the effective period of imprisonment to be imposed is justified; whether it is proportionate to the crime committed. Such an approach should take into account the conditions affecting the accused in detention and the reason for the long period of incarceration. And accordingly, in determining, in a respect of a charge of murder, whether the substantial and compelling circumstances warrant a lesser sentence than that prescribed, the test is not whether on its own that period of detention constitutes a substantial and compelling circumstance, but whether the effective sentence proposed is proportionate to the crimes committed: whether the sentence in all its circumstances, including the period spent in detention prior to conviction and sentence is a just one."

[17] In *S v Vilakazi*⁶, Nugent JA held as follows:

"In cases of serious crime, the personal circumstances of the offender, by themselves, will necessarily recede into the background. Once it becomes clear that the crime is deserving of a substantial period of imprisonment the questions whether the accused is married or single, whether he has two children or three, whether or not he is in employment, are in themselves largely immaterial to what that period should be, and those seem to me to be kind of 'flimsy' grounds that Malgas said should be avoided".

[18] It is trite that a court can only deviate from the prescribed minimum sentence applicable in count 1 if substantial and compelling circumstances are found to justify the imposition of a lesser sentence. In *S v Malgas*⁷, it was found that when dealing with certain types of crimes, it is no longer "business as usual" as formulated and

⁵ 2012 (2) SACR 1 (SCA).

⁶ 2009 (1) SACR 552 (SCA) para 58.

⁷ 2001 (1) SACR 469 (SCA) at 476 F to 477 F.

that the minimum sentences should not be departed from “lightly, or for flimsy reasons” which could not withstand scrutiny.

[19] I now turn to the submission that the appellant showed remorse because he pleaded guilty.

[20] In *S v Matyityi*⁸, Ponnann JA stated:

"There is, moreover, a chasm between regret and remorse. Many accused persons might well regret their conduct, but that does not without more translate to genuine remorse. Remorse is a gnawing pain of conscience for the plight of another. This genuine contrition can only come from the appreciation and acknowledgment of the extent of one's error. Whether the offender is sincerely remorseful and not simply feeling sorry for himself or herself at having been caught, is a factual question. It is the surrounding actions of the accused rather than what he says in court that one should rather look."

[21] The appellant indicated that the deceased swallowed two pills which were part of his ill mother's medication, is not supported by evidence and in my considered view was meant to mislead. The appellant after killing the deceased and did not immediately reported the matter to his mother or the deceased's mother, but decided to be with his friends. The death of the deceased was avoidable and the appellant should have explored other means of punishing the deceased if indeed he was at fault, taking into account the relationship the two enjoyed. There was a stage when the appellant was intending to plead not guilty to the charges and later on changed his mind and pleaded guilty. He did not explain what provoked his change of mind and decided to plead guilty. He does not say what motivated him to commit the offence.

[22] I find that the surrounding actions of the appellant in the circumstances of this case are not genuine remorse. The fact that the appellant pleaded guilty does not equate to “genuine contrition”, as held in the case of *Matyityi*.

⁸ 2011 (1) SACR 40 at para 13.

[23] It was submitted on behalf of the appellant that the sentence imposed was disproportionate to the crimes committed and that the sentence was not individualized. It is trite that the court imposing sentence had to consider the personal circumstances of the appellant, the interests of society and the crime committed. The aggravating circumstances in this instance are the following:

1. The brutal and violent manner in which the deceased, a defenceless, innocent two-year old child was murdered at the hands of the appellant who was his uncle and with whom he was in a relationship of trust and love.
2. The loss of their only son by Ms M[...] and her husband at the hands of the appellant, whom they loved and trusted as a family member.
3. The long-term impact of the loss of deceased on his parents socially, emotionally, physically and financially.
4. The long-term healing process due to the relationship between the appellant and his family.

[24] The State submitted that the sentence imposed on the appellant is not disproportionate, shocking nor vitiated by any misdirection. In this instance there were no substantial and compelling circumstances present for the trial court to deviate from the prescribed minimum sentence of life imprisonment.

[25] Sentencing is mainly the task of the trial court, and a court of appeal will only interfere if the sentence is inappropriate or induces a sense of shock, or where there is a striking disparity between the imposed sentence and the sentence which would have been imposed by the court of appeal⁹.

[26] The trial court found that there were no substantial and compelling circumstances to warrant a departure from the prescribed minimum sentence in respect of count 1.

⁹ In this regard see *S v Anderson* 1964 (3) SA 494 (A) at 495B-G; *S v Salzwedel and others* (273/98) [1999] ZASCA 93; 2000 (1) SA 786 (SCA) at 790B-E; *S v Kgosimore* (635/98) [1999] ZASCA 63; 1999 (2) SACR 238 (SCA) in para [10].

[27] The trial court adopted a balanced approach in considering sentence and took into consideration the personal circumstances of the appellant, the seriousness of the offences and the interests of society.

[28] I find that the trial court exercised its discretion properly and judicially and that there is no reason for this Court to interfere with the sentence of life imprisonment imposed by the trial court. The sentence imposed by the trial court is not inappropriate nor does it induce a sense of shock and there is no striking disparity between the sentence imposed by the trial court and the sentence which would have been imposed by this Court, more particularly, if regard is had to the seriousness of the offence and the circumstances of this case.

[29] In the result the following order is made:

1. The appeal against sentence is dismissed.

S.D JOHNSON
ACTING JUDGE OF THE HIGH COURT,
PRETORIA

I agree,

M.J MOSOPA
JUDGE OF THE HIGH COURT,
PRETORIA

APPEARANCES

For the Appellant:	Adv. L.A Van Wyk
Instructed by:	Legal Aid South Africa
For the Respondent:	Adv. T Nyakama

Instructed by:

Director of Public Prosecution

Date of Hearing:

21 August 2025

Date of Judgment:

18 September 2025